

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Recover Costs Recorded in the Catastrophic Event Memorandum Account Pursuant to Public Utilities Code Section 454.9 Associated with Governor Brown's January 17, 2014 State of Emergency Proclamation for the Drought and California Public Utilities Commission Resolution ESRB-4 (U39E).

Application 15-05-016
(Filed May 28, 2015)

**DECISION AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY TO
RECOVER COSTS RECORDED IN THE CATASTROPHIC EVENT
MEMORANDUM ACCOUNT RELATED TO GOVERNOR BROWN'S
JANUARY 17, 2014 STATE OF EMERGENCY PROCLAMATION FOR THE
DROUGHT AND CALIFORNIA PUBLIC UTILITIES COMMISSION
RESOLUTION ESRB-4**

Summary

Today's decision approves a settlement agreement entered into by Pacific Gas and Electric Company and the Office of Ratepayer Advocates. As approved, the settlement agreement provides for a total Catastrophic Event Memorandum Account revenue requirement of \$26,230,500.

1. Background

On May 28, 2015, Pacific Gas and Electric Company (PG&E) filed an application requesting authorization to recover incremental disaster-related electrical costs recorded in its Catastrophic Event Memorandum Account (CEMA) and incurred in responding to the impacts of the drought, as directed by

Governor Brown's Proclamation of a State of Emergency for the drought (Drought Emergency Proclamation); the February 18, 2014 letter from the California Public Utility Commission's (Commission) Safety and Enforcement Division's (SED) Acting Director to PG&E's Electric Operations Vice President of Asset Management; the Governor's April 25, 2014 Proclamation of the Continuation of a State of Emergency (Drought Emergency Proclamation Continuation) and Commission Resolution ESRB-4 (collectively referred to as the "CEMA Events"). Specifically, PG&E requests authorization to recover \$26.6 million in electric revenue requirements that are associated with expenses incurred in 2014 in responding to the drought and the CEMA directives. The Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) timely protested the application.

TURN intended to focus on whether recorded CEMA costs double count spending on work already included in authorized revenue requirements but needed the information from the independent audit report pending as of the date protests were due. ORA questioned whether:

- the CEMA-eligible incremental costs related to the CEMA events were proximately caused by the State of Emergency identified in Resolution ESRB-4 or other CEMA Directives;
- the proposed recovery of \$26.6 million in revenue requirements based on estimated CEMA-eligible costs are incremental, reasonable, and justified;
- the estimated total CEMA-eligible incremental costs of \$26.6 million are properly associated with the CEMA events, reasonable and justified;
- the allocation of the CEMA-eligible incremental costs to California ratepayers and the associated revenue requirement request of \$26.6 million are reasonable justified, and consistent with the law;

- the accounting method(s) used for booking the costs regarding the CEMA Events is reasonable, justified, and consistent with the law; and
- PG&E's proposed amortization in rates of the \$26.6 million authorized CEMA-expenses or any other proposed recovery methods are reasonable, justified, and consistent with the law.

PG&E timely replied to the filed protests on July 23, 2015. PG&E generally agreed that the issues raised in the protests were appropriate for Commission consideration with one caveat. PG&E argues in reply that ORA's proposal to consider whether or not the CEMA costs were "proximately caused" by the drought wrongly imposed a different standard for cost recovery than the requirements set forth in Resolution E-3238. PG&E contends that Resolution E-3238 authorizes CEMA cost recovery for reasonable and incremental expenses incurred in "complying with government agency orders resulting from declared disasters."¹

A prehearing conference was held on August 12, 2015, and a Scoping Memorandum was issued on September 10, 2015. On September 30, 2015, ORA served the other parties with its "Report on the Results of Examination for Pacific Gas and Electric Company's Catastrophic Event Memorandum Account Pursuant to Resolution ESRB-4" (ORA Report). As shown in Table 1 below, ORA argues that \$0.675 million in straight-time labor was included in PG&E's request. ORA contends these amounts are not incremental because they are recovered in normal rates and amount to PG&E shifting its work priorities.

¹ Resolution (Res.) E-3238 at 2.

Table 1
Recommended Adjustments
PG&E's Request versus ORA's Recommended Reductions
(In Millions of Dollars)

	PG&E Requested	ORA Recommended	Difference
Straight-Time Labor - Expense	\$0.675	\$0	\$0.675

The ORA report recommended that the Commission remove \$0.675 million in expense from PG&E's proposed \$26.568 million CEMA recovery request. ORA concluded that, except for straight-time labor costs, all other costs appear reasonable and within the scope of ESRB-4.

Pursuant to the schedule set forth in the Scoping Memorandum, evidentiary hearings were set for October 26 and 27 of 2015. By e-mail dated October 16, 2015, the parties to the proceeding requested a suspension of the procedural schedule to pursue settlement discussions. The request was granted. On November 5, 2015, TURN withdrew as an active party and stated it would not be participating in settlement discussions. Two additional extensions of time were granted upon the joint requests of the settling parties, PG&E and ORA (the Settling Parties).

On December 11, 2015, the Settling Parties notified the assigned Administrative Law Judge (ALJ) that they had reached a settlement in principle and a formal settlement agreement would be filed with the Commission as soon as practical. On February 1, 2016, the Joint Motion of Pacific Gas and Electric Company and the Office of Ratepayer Advocates for Approval and Adoption of the Attached Settlement Agreement was filed. The Joint Motion of Pacific Gas and Electric Company and the Office of Ratepayer Advocates for Admission of the Parties' Testimonies into the Record as Evidence was also filed on February 1, 2016.

2. Discussion and Analysis**2.1. CEMA Events**

Over the last several years, the state of California has received significantly lower-than-average rainfall and snowpack, putting the state in a severe drought. In January 2014, manual and electronic readings recorded the snowpack's statewide water content at about 20 percent of normal average for the year. As a result of the severe drought-related impacts, Governor Brown issued the Drought Emergency Proclamation on January 17, 2014. Governor Brown directed state officials to take actions to mitigate against conditions that could result from California's severe drought. These activities included the creation of a statewide water conservation campaign to make all Californians aware of the drought and to encourage personal actions to reduce water usage; implementation of water use reduction plans for all state agencies; and directing the California Department of Forestry and Fire Protection (Cal Fire) to hire additional seasonal firefighters to suppress wildfires and take other needed action to protect public safety during this time of elevated fire risk.² In response to Governor Brown's Drought Emergency Proclamation, SED sent a letter to PG&E directing PG&E to take all practicable measures to reduce the likelihood of fires started by PG&E facilities.

On April 25, 2014, Governor Brown issued the Drought Emergency Proclamation Continuation ordering, among other things, additional water conservation measures to be taken across the state. On June 12, 2014, the Commission responded to the ongoing drought and Governor Brown's drought

² California Governor Brown's January 17, 2014 State of Emergency Proclamation for California Drought, <http://gov.ca.gov/news.php?id=18379>.

proclamations by approving Resolution ESRB-4. Resolution ESRB-4 ordered all California Investor Owned Utilities (IOUs) to “take practicable measures to reduce the likelihood of fires associated with their facilities.”³ Resolution ESRB-4 specified the following measures, among others, be taken:

- Increasing vegetation inspections and removing hazardous vegetation near the IOUs’ electric power lines and poles.
- Sharing resources with Cal Fire to staff lookouts adjacent to the IOUs’ property.
- Clearing access roads under power lines for fire truck access.
- Examining and creating public-private partnerships during the state of emergency that they find necessary to reduce the likelihood of fires associated with their facilities or mitigate the impact of fires on their facilities.⁴

The Commission also ordered that, “to the extent that additional funding is reasonable, and not already included or recoverable in the IOU accounts, incremental cost recovery through the Catastrophic Event Memorandum Accounts (CEMAs) may be sought by the IOUs after the February 18, 2014 letter from SED.”⁵

PG&E’s Electric Distribution Vegetation Management (VM) undertook six major fire risk mitigation initiatives as follows:

- Enhanced Vegetation Inspection and Mitigation
- Wild Land Urban Interface Protection
- High Fire Risk Tree Identification and Mitigation

³ California Public Utilities Resolution ESRB-4 at OP2.

⁴ *Id.*

⁵ *Id.* at OP 4.

- Fuel Reduction and Emergency Response Access
- Early Detection of Forest Disease/Infection
- Early Detection and Response to Wildfires

3. Joint Motion for Approval of Settlement Agreement

3.1. The Settlement Agreement

In addition to the general terms and conditions, the Settling Parties agreed to compromise their litigation position as a part of the Settlement Agreement as follows: PG&E's total CEMA revenue requirements for expenses incurred in 2014 in response to the CEMA directives will be \$26,230,500, instead of \$26,568,800 as initially proposed. The Settlement Agreement also specifies that PG&E's 2015 CEMA revenue requirement will be recovered but not re-litigated through the Distribution Revenue Adjustment Mechanism (DRAM), which will be consolidated in the next available consolidated electric rate change following a final decision in this proceeding.

3.1.1. Reasonableness of the Settlement

The Settlement agreement addresses the major issues in the proceeding and approves a rate recovery of a level of costs acceptable to PG&E and ORA. Consistent with Rule 12.1(d) and D.95-05-042, a settlement must be reasonable before it can be adopted by the Commission.⁶ The Settling Parties assert that the settlement is reasonable in that it is a fair compromise of strongly held views. Consistent with this assertion, the settlement agreement represents a reasonable compromise between the litigation positions of PG&E and ORA.

⁶ Rule 12.1(d) provides that "The Commission will not approve settlements whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law and in the public interest." *See also*, D.95-05-042, CPUC 2d 779,788.

3.1.2. Consistency with the Law

A settlement must also be consistent with law in order for the Commission to adopt it.⁷ We see nothing to suggest, and no party claims, that a statutory provision or prior Commission decision would be contravened or compromised by the Settlement Agreement. We therefore conclude that the Settlement Agreement is consistent with the applicable law.

3.1.3. The Public Interest

Finally, the public interest and the interests of ratepayers must be considered before the Commission approves a settlement.⁸ Consistent with D.88-12-083, the settlement will spare the Commission and the parties the time, effort, and costs required litigating the disputed issues. Moreover, this settlement represents an agreement among all parties in a proceeding wherein the majority of parties represent the public interest. Accordingly, taken as a whole, the Settlement Agreement is in the public interest.

3.2. Testimony

By motion dated February 1, 2016, PG&E and ORA offered several exhibits into the record, which are received herein.

The testimony is identified as follows and is received into evidence:

- Exhibit 1: Pacific Gas and Electric Company's 2015 Catastrophic Event Memorandum Account Prepared Testimony, which is sponsored by J. Conor Doyle, Eric Back, and Stephen J. Koenig, and served on May 28, 2015.
- Exhibit 2: ORA's Report on the Results of Examination for Pacific Gas and Electric Company's Catastrophic Event

⁷ *Id.*

⁸ *Id.*

Memorandum Account Pursuant to Resolution ESRB-04, which is sponsored by L. Mark Waterworth, and served on September 30, 2015.

- Exhibit 3: Pacific Gas and Electric Company's 2015 Catastrophic Event Memorandum Account Rebuttal Testimony, which is sponsored by J. Conor Doyle and Peter Dominguez, and served on October 12, 2015.

4. Conclusion

For the reasons set forth above, we find the settlement complies with Rule 12.1(d) and we will approve the Settlement Agreement affixed hereto as Attachment A.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3358 dated June 11, 2015; the Commission preliminarily categorized this application as Ratesetting, and preliminarily determined that hearings were necessary. Because the parties settled their dispute, no hearings are required. Therefore, the hearings determination is changed to state that no evidentiary hearings are necessary.

6. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Katherine Kwan MacDonald is the assigned ALJ in this proceeding.

Findings of Fact

1. On May 28, 2015, PG&E requested authorization to recover \$26.6 million in electric revenue requirements associated with an alleged \$26.6 million in CEMA eligible incremental costs.
2. ORA and TURN filed protests to PG&E's application on July 3, 2015.
3. On January 17, 2014, Governor Brown issued a State of Emergency Proclamation for California Drought.
4. On April 24, 2015, Governor Brown issued the Drought Emergency Proclamation Continuation.
5. On June 12, 2015, the Commission approved Resolution ESRB-4 in response to Governor Brown's drought proclamations.
6. ORA recommended disallowing \$0.675 million in straight-time labor.
7. On November 5, 2015, TURN notified the assigned ALJ and the other parties to this proceeding that TURN did not intend to participate in settlement negotiations and withdrew as an active party.
8. On February 1, 2016, the Joint Motion of Pacific Gas and Electric Company and the Office of Ratepayer Advocates for Approval and Adoption of the Attached Settlement Agreement was filed.
9. This settlement represents an agreement among all parties in a proceeding wherein ORA represents the public interest.

Conclusions of Law

1. PG&E's 2015 CEMA revenue requirement should be \$26,230,500.
2. The Settlement Agreement represents a reasonable compromise between the litigation positions of the parties to this proceeding, PG&E and ORA.
3. The Settlement Agreement does not contravene or compromise any statutory provision or prior Commission decision.

4. The Settlement Agreement represents a fair compromise of the parties' positions, will spare the Commission and the parties the time, effort, and costs required to litigate the disputed issues, and is in the public interest.
5. The Settlement Agreement meets the Rule 12.1(d) requirements and should be approved.
6. Hearings are not necessary.

O R D E R

IT IS ORDERED that:

1. The settlement between Pacific Gas and Electric Company and the Office of Ratepayer Advocates, which is affixed hereto as Attachment A, is approved.
2. Pacific Gas and Electric Company shall recover the 2015 Catastrophic Event Memorandum Account (CEMA) revenue requirement of \$26,230,500; and this 2014 CEMA revenue requirement shall be recovered through the Distribution Revenue Adjustment Mechanism in the next available consolidated electric rate change following issuance of this decision.
3. Exhibits 1, 2, and 3 are received into evidence for Application 15-05-016.
4. The hearing determination for Application 15-05-016 is changed to no hearings necessary.
5. Application 15-05-016 is closed.

This order is effective today.

Dated _____, 2016, at San Francisco, California.

ATTACHMENT A

SETTLEMENT AGREEMENT

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company to Recover Costs Recorded in the Catastrophic Event Memorandum Account Pursuant to Public Utilities Code Section 454.9 Associated with Governor Brown's January 17, 2014 State of Emergency Proclamation for the Drought and California Public Utilities Commission Resolution ESRB 4.

Application No. 15-05-016
(filed May 28, 2015)

U 39 E

**SETTLEMENT AGREEMENT BETWEEN PACIFIC GAS AND
ELECTRIC COMPANY AND OFFICE OF RATEPAYER
ADVOCATES**

1. INTRODUCTION

In accordance with Article 12 of the Rules of Practice and Procedure (Rule) of the California Public Utilities Commission (CPUC or Commission), the Settling Parties (as defined *infra* at section 2.4) mutually accept the terms and conditions stated herein and enter into this Settlement Agreement (Settlement) to resolve all disputed issues in this matter without the need for an evidentiary hearing before the Commission.

2. DEFINITIONS

- 2.1** The term "PG&E" means the Pacific Gas and Electric Company;
- 2.2** The term "ORA" means the Office of Ratepayer Advocates;
- 2.3** The term "TURN" means The Utility Reform Network; and
- 2.4** The term "Settling Parties" means collectively PG&E and ORA.

3. BACKGROUND

On May 28, 2015, PG&E filed Application (A.) 15-05-016 to recover incremental costs recorded in its Catastrophic Event Memorandum Account (CEMA) that were incurred in 2014 responding to the impacts of the drought, in accordance with the following (hereafter collectively referred to as "the CEMA Directives"):

- California Governor Brown's Proclamation of a State of Emergency (Drought Emergency Proclamation);
- The February 18, 2014, letter from CPUC Safety and Enforcement Office (SED)

Acting Director to PG&E's Electric Operations Vice-President of Asset Management;

- Governor Brown's April 25, 2014, Proclamation of the Continuation of a State of Emergency (Drought Emergency Proclamation Continuation); and
- Commission Resolution ESRB-4, which ordered electric utilities to undertake practicable measures necessary to reduce the likelihood of fires associated with their facilities.^{1/}

PG&E's A.15-05-016 requested authorization to recover \$26.568 million in electric revenue requirements that are associated with the expenses incurred in 2014 by responding to the drought and the CEMA Directives. In order to comply with the CEMA Directives and mitigate impacts of the drought, PG&E initiated six new Vegetation Management activities to reduce the likelihood of fires associated with PG&E's electric distribution facilities^{2/} (hereafter, collectively referred to as "CEMA Activity" or "CEMA Activities"). The drought affected all of California according to Governor Brown's Drought Emergency Proclamation. Accordingly PG&E implemented its CEMA Activities across all of its service territories in California, focusing on areas with the highest risk of fire ignition. Consistent with past CEMA applications and Commission decisions, PG&E has adjusted its CEMA-eligible costs to exclude employee benefits associated with labor expense.

In its Application, PG&E proposed to recover the 2015 CEMA revenue requirement through the Distribution Revenue Adjustment Mechanism (DRAM), which will be consolidated in the next available consolidated electric rate change following a final decision in this proceeding. PG&E proposed that the revenue requirement associated with the CEMA Activities be recorded monthly into the CEMA with interest calculated in the account on a monthly basis, based on 3-month commercial paper interest rates. The annual amount PG&E proposed to recover in rates would consist of the CEMA Activities account balance as of March 27, 2015, plus interest and franchise fees and uncollectibles (FF&U), in order to approximate a zero balance by 2015 year's end for the 2014 CEMA Activities. Rates set to recover CEMA costs would be set in the same manner as rates that are set to recover other electric distribution costs, using adopted methodologies for revenue allocation and rate design.

4. SETTLEMENT TERMS AND CONDITIONS

^{1/} The CEMA Directives are attached to PG&E's written testimony, chapter 1, attachments A, B, C, and D, which accompanied the filing and service of this Application.

^{2/} PG&E is not seeking recovery of vegetation management costs associated with its electric transmission facilities, since those facilities are not subject to cost recovery under CPUC jurisdiction.

4.1 The Settling Parties agree that PG&E's CEMA-related incremental expense request shall be reduced by \$337,500 from \$26,568,000 to \$26,230,500.

4.2 The Settling Parties agree that PG&E's total 2015 CEMA revenue requirement for incremental expenses incurred in 2014 in response to the CEMA Directives shall be \$26,230,500.

4.3 The Settling Parties agree: (i) PG&E's 2015 CEMA revenue requirement will be \$26,230,500; and (ii) its CEMA revenue requirement will be recovered but not re-litigated through the DRAM, which will occur in the next available consolidated electric rate change following a final decision in this proceeding.

5. OTHER TERMS AND CONDITIONS

5.1 *Commission's Primary Jurisdiction.* The Settling Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedies regarding this Settlement. None of the Settling Parties may bring an action regarding this Settlement in any State or Federal court or administrative agency without having first exhausted its administrative remedies at the Commission.

5.2 *Further Actions.* The Settling Parties acknowledge that this Settlement is subject to approval by the Commission. As soon as practicable after all the Settling Parties have signed the Settlement, the Settling Parties through their respective attorneys will prepare and file a Motion for Approval and Adoption of the Settlement. The Settling Parties will furnish such additional information, documents, or testimonies as the Commission may require for purposes of granting the Motion and approving and adopting the Settlement.

5.3 *No Personal Liability.* None of the Settling Parties, or their respective employees, attorneys, or any other individual representative or agent, assumes any personal liability as a result of the Settling Parties signing this Settlement.

5.4 *Non-Severability.* The provisions of this Settlement are non-severable. If any of the Settling Parties fails to perform its respective obligations under this Settlement, the Settlement will be regarded as rescinded.

5.5 *Voluntary and Knowing Acceptance.* Each of the Settling Parties hereto acknowledges and stipulates that it is agreeing to this Settlement freely, voluntarily, and without any fraud, duress, or undue influence by any other Settling Party. Each Settling Party has read and fully understands its rights, privileges, and duties under this Settlement, including its right to discuss this Settlement with its legal counsel, which has been exercised to the extent deemed necessary.

5.6 *No Modification.* This Settlement constitutes the entire understanding and agreement of the Settling Parties regarding the matters set forth herein, which may not be altered, amended, or modified in any respect except in writing and with the express written and signed consent of all the Settling Parties hereto. All prior oral or written agreements, settlements, principles, negotiations, statements, representations, or understandings whether oral or in writing regarding any matter set forth in this Settlement, are expressly waived and have no further force or effect.

5.7 *No Reliance.* None of the Settling Parties has relied or presently relies on any statement, promise, or representation by any other Settling Party, whether oral or written, except as specifically set forth in this Settlement. Each Settling Party expressly assumes the risk of any mistake of law or fact made by such Settling Party or its authorized representative.

5.8 *Counterparts.* This Settlement may be executed in separate counterparts by the different Settling Parties hereto and all so executed will be binding and have the same effect as if all the Settling Parties had signed one and the same document. All such counterparts will be deemed to be an original and together constitute one and the same Settlement, notwithstanding

that the signatures of the Settling Parties and/or of a Settling Party's attorney or other representative do not appear on the same page of this Settlement.

5.9 *Binding upon Full Execution.* This Settlement will become effective and binding on each of the Settling Parties as of the date when it is fully executed. It will also be binding upon each of the Settling Parties' respective successors, subsidiaries, affiliates, representatives, agents, officers, directors, employees, and personal representatives, whether past, present, or future.

5.10 *Commission Adoption Not Precedential.* In accordance with Rule 12.5, the Settling Parties agree and acknowledge that unless the Commission expressly provides otherwise, Commission approval and adoption of this Settlement does not constitute approval of or precedent regarding any principle or issue of law or fact in this or any other current or future proceeding.

5.11 *Enforceability.* The Settling Parties agree and acknowledge that after issuance of the Commission decision approving and adopting this Settlement, the Commission may reassert jurisdiction and reopen this proceeding to enforce the terms and conditions of this Settlement.

5.12 *Finality.* Once fully executed by the Settling Parties and adopted and approved by a Commission Decision, this Settlement fully and finally settles any and all disputes among and between the Settling Parties in this proceeding, unless otherwise specifically provided in the Settlement.

5.13 *No Admission.* Nothing in this Settlement or related negotiations may be construed as an admission of any law or fact by any of the Settling Parties, or as precedential or binding on any of the Settling Parties in any other proceeding whether before the Commission or in any state or federal court or administrative agency. Further, unless expressly stated herein this Settlement does not constitute an acknowledgement, admission, or acceptance by any of the

Settling Parties regarding any issue of law or fact in this matter, or the validity or invalidity of any particular method, theory, or principle of ratemaking or regulation in this or any other proceeding.

5.14 *Authority to Sign.* Each Settling Party executing this Settlement represents and warrants to the other Settling Party that the individual signing this Settlement and the related Motion has the legal authority to do so on behalf of the Settling Party.

5.15 *Limited Admissibility.* Each Settling Party signing this Settlement agrees and acknowledges that this Settlement will be admissible in any subsequent Commission proceeding for the sole purpose of enforcing the Terms and Conditions of this Settlement.

5.16 *Estoppel or Waiver.* Unless expressly stated herein, the Settling Parties' execution of this Settlement is not intended to provide any of the Settling Parties in any manner a basis of estoppel or waiver in this or any other proceeding.

5.17 *Rescission.* If the Commission rejects or materially alters any provision of the Settlement, it will be deemed rescinded by the Settling Parties and of no legal effect thereafter. The Settling Parties may negotiate in good faith regarding whether in response they want to file a new or revised Settlement.

